

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEVIN McGILL,

Plaintiff,

ANSWER

-against-

07 CIV 8083 (CLB)

JOHN CALACA, DANIEL FLANICK,
JAMES DETCH and TOWN OF CRAWFORD,

Defendants.

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Defendant JAMES DETCH, by his attorneys, TARSHIS, CATANIA, LIBERTH, MAHON & MILLIGRAM, PLLC, answering the complaint in intervention of the plaintiff, alleges as follows:

PARTIES

FIRST: Denies any knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in the paragraphs of the complaint numbered "1," "2," "3," "5" and "6," and respectfully refers all questions of law and fact to the court and trier-of-fact, respectively.

SECOND: Denies any knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in the paragraph of the complaint numbered "4" in the form alleged except admits that JAMES DETCH (hereinafter "DETCH") served as a member of the Police Advisory Board of the Town of Crawford.

THIRD: Denies each and every allegation contained in the paragraph of the complaint numbered "7" and respectfully refers all questions of law and fact to the Court and trier-of-fact, respectively.

JURISDICTION

FOURTH: Denies each and every allegation contained in the paragraph of the complaint numbered "8" and respectfully refers all questions of law and fact to the Court and trier-of-fact.

FACTUAL ALLEGATIONS

FIFTH: Denies any knowledge or information sufficient to form a belief as to the truth or falsity of each and every allegation contained in the paragraphs of the complaint numbered "9," "10," "11," "12," "13," "14," "15," "16," "17," "18," "22" and "23".

SIXTH: Denies each and every allegation contained in the paragraphs of the complaint numbered "19," "20," "21," "24," "25," "26," "28," "29," "30," "31," "32," "33," "34" and "35".

SEVENTH: Denies each and every allegation contained in the paragraph of the complaint numbered "27" in the form alleged.

CAUSES OF ACTION

EIGHTH: Repeats and realleges each and every response to the allegations contained in the paragraphs of the complaint numbered "1" through "35", inclusive, as realleged in paragraph "36", with the same force and effect as though more fully set forth at length herein.

NINTH: Denies each and every allegation contained in the paragraphs of the complaint numbered "37," "38" and "39".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

TENTH: The injuries and/or damages alleged to have been sustained by the plaintiff were caused in whole or partly by the culpable conduct of the plaintiff.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

ELEVENTH: The allegations set forth within the complaint fail to state a cause of action under the First Amendment and the Fourteenth Amendment to the United States Constitution.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

TWELFTH: The plaintiff failed to mitigate his damages.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

THIRTEENTH: The plaintiff had no property interest that was entitled to constitutional protection and, accordingly, the plaintiff cannot maintain this action. In addition, the plaintiff was not denied a certificate of occupancy.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

FOURTEENTH: The plaintiff's complaint as against defendant JAMES DETCH is barred on the grounds of qualified immunity.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

FIFTEENTH: No act or omission alleged on the part of defendant JAMES DETCH was the proximate cause of any alleged violation of plaintiff's constitutional rights.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

SIXTEENTH: The plaintiff did not exhaust his state remedies.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

SEVENTEENTH: JAMES DETCH did not act under color of state law and did not conspire with any of the co-defendants. Any alleged wrongful acts on the part of JAMES DETCH were performed under threat of physical and financial harm by defendant DANIEL FLANICK.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE

EIGHTEENTH: The plaintiff did not possess a viable civil cause of action or have a viable criminal complaint against non-party CLAUDE BABCOCK.

CROSS-CLAIM AGAINST DEFENDANT TOWN OF CRAWFORD
PURSUANT TO FRCP RULE 13

NINTEENTH: Pursuant to Chapter 14 of the Code of the TOWN OF CRAWFORD, the TOWN OF CRAWFORD is required to indemnify and hold harmless its employees, which include volunteers expressly authorized to participate in a publicly sponsored volunteer program or any other person holding a position by election, appointment or employment in the service of the TOWN OF CRAWFORD whether or not compensated, from any judgment, reasonable attorneys' fees and litigation expenses arising out of the employee's position with the TOWN OF CRAWFORD.

TWENTIETH: Despite due demand, defendant TOWN OF CRAWFORD has not agreed to indemnify and hold defendant JAMES DETCH harmless from any judgment entered in this action and from any attorneys' fees and litigation expenses incurred in this action.

TWENTY-FIRST: Based on the foregoing, pursuant to Chapter 14 of the Code of the TOWN OF CRAWFORD, defendant JAMES DETCH demands that the TOWN OF CRAWFORD indemnify and hold him harmless from any judgment entered in this action and from any attorneys' fees and litigation expenses incurred in this action.

WHEREFORE, defendant JAMES DETCH demands judgment:

1. dismissing the complaint;
2. apportioning liability between all parties; and
3. for costs, interest, disbursements and attorneys' fees incurred in this action.

Dated: Newburgh, New York
June 2, 2008

Yours, etc.,

TARSHIS, CATANIA, LIBERTH,
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